



2024:DHC:3190-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 16.04.2024

+ W.P. (C) 5425/2024, CM APPL. 22416/2024, 22415/2024

SIS LIMITED

.... Petitioner

Versus

ASSISTANT COMMISSIONER (DGST) WARD 201 203
AND 206

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Kavita Jha, Mr. Shammi Kapoor, Mr. Vishal Kumar &
Ms. Prachi Jain, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.12.2023 whereby the impugned Show Cause Notice dated 25.09.2023 proposing a demand of Rs 1,51,05,808.00/- against the petitioner had been disposed of and demand including penalty has been raised against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).



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2. Issue notice. Notice is accepted by learned counsel appearing for respondent. With the consent of the parties, petition is taken up for final disposal today.

3. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 09.11.2023, however, the impugned order dated 29.12.2023 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 25.09.2023 shows that the Department has given reasons under separate headings i.e., under declaration of output tax; excess claim of Input Tax Credit ["ITC"]; Scrutiny of ITC reversals; ITC to be reversed on non-business transaction and exempt supplies and under declaration of ineligible ITC. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving disclosures under each of the heads.

5. The impugned order, however, after recording the narration records that the reply uploaded by the taxpayer is incomplete, not duly supported by adequate documents and unable to clarify the issue. It states that *"And whereas, the taxpayer had filed their objections/reply in DRC-06 but he failed to avail the Personal Hearing opportunity on the given due date. On the basis of reply uploaded by the taxpayer, it has been observed that the same is incomplete, not duly supported by adequate documents and unable to clarify the issue. As such, taxpayer*



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is not entitled to get benefit on the basis of its plain reply which is not supported with proper calculations/reconciliation and relevant documents. Since, the reply filed is not clear and satisfactory, the demand of tax and interest conveyed via DRC-01 is confirmed.” The Proper Officer has opined that the reply is incomplete, not duly supported by adequate documents, unable to clarify the issue, not clear and unsatisfactory.

6. The observation in the impugned order dated 29.12.2023 is not sustainable for the reasons that the reply dated 09.11.2023 filed by the Petitioner is a detailed reply with supporting documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the reply is incomplete, not duly supported by adequate documents, unable to clarify the issue, not clear and unsatisfactory which ex-facie shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

7. Further, if the Proper Officer was of the view that any further details were required, the same could have been specifically sought from the Petitioner. However, the record does not reflect that any such opportunity was given to the Petitioner to clarify its reply or furnish further documents/details.

8. In view of the above, the impugned order dated 29.12.2023 cannot be sustained, and the matter is liable to be remitted to the



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Proper Officer for re-adjudication. Accordingly, the impugned order dated 29.12.2023 is set aside and the matter is remitted to the Proper Officer for re-adjudication.

9. Petitioner may file a further reply to the Show Cause Notice within a period of 30 days from today. Thereafter, the Proper Officer shall re-adjudicate the Show Cause Notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law within the period prescribed under Section 75 (3) of the Act.

10. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties are reserved.

11. Further, the challenge to Notification No. 9 of 2023 with regard to the initial extension of time is left open.

12. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 16, 2024/sk